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 11 and Debtor In Possession

12
 13 **UNITED STATES BANKRUPTCY COURT**
 14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 In re

16 Case No. 22-02384-11

17 BORREGO COMMUNITY
 18 HEALTH FOUNDATION,

19 Chapter 11 Case

20 Debtor and Debtor In
 21 Possession.

22 **DEBTOR'S EMERGENCY FIRST DAY**
 23 **MOTION OF DEBTOR FOR**
 24 **AUTHORITY TO: (I) CONTINUE**
 25 **USING EXISTING CASH**
 26 **MANAGEMENT SYSTEM, BANK**
 27 **ACCOUNTS AND BUSINESS FORMS;**
 28 **(II) IMPLEMENT CHANGES TO THE**
 29 **CASH MANAGEMENT SYSTEM IN**
 30 **THE ORDINARY COURSE OF**
 31 **BUSINESS; (III) REMIT CAPITATION**
 32 **PAYMENTS TO OR AS DIRECTED BY**
 33 **THE PURCHASER OF THE**
 34 **RIVERSIDE CLINICS; AND (IV)**
 35 **OBTAIN RELATED RELIEF;**
 36 **MEMORANDUM OF POINTS AND**
 37 **AUTHORITIES IN SUPPORT**
 38 **THEREOF**

39
 40 [Declaration of Isaac Lee in Support of
 41 Debtor's First Day Motions filed
 42 concurrently herewith]

43
 44 Judge: Honorable Laura S. Taylor

45 Date: TBD

46 Time: TBD

47 Place: TBD

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EMERGENCY MOTION

Pursuant to Local Bankruptcy Rule 9013-9 and §§ 105, 363, 364, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”),¹ Borrego Community Health Foundation (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the “Case”), hereby moves, on an emergency basis (the “Motion”), for the entry of an order, pursuant to for entry of an order (substantially in the form attached hereto as **Exhibit “A”** (the “Proposed Order”)) authorizing the Debtor to: (1) continue to use its cash management system, including the continued maintenance of its existing bank accounts and business forms; (2) implement changes to its cash management system in the ordinary course of business, including opening new or closing existing bank accounts; (3) remit cash received from capitation revenue related to the Riverside Clinics² to or as directed by the acquirer of those clinics; and (4) obtain related relief.

The Debtor further requests that the Court authorize the financial institutions at which the Debtor maintains various bank accounts to (a) continue to maintain, service and administer the Debtor's bank accounts, and (b) debit the bank accounts in the ordinary course of business on account of (i) wire transfers or checks drawn on the bank accounts, or (ii) undisputed service charges owed to the banks for maintenance of the Debtor's cash management system, if any.

¹ All references to “§” or “section” herein are to sections of the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, as amended.

² The term “Riverside Clinics” references all assets, property and rights of the Debtor related to the operations of the following outpatient clinics located in Riverside County, California: (i) Eastside Health Center Building A, located at 1970 University Ave., Riverside, CA; (ii) Eastside Health Center Building B, located at 1971 University Ave., Riverside CA; and (iii) Arlanza Family Health Center, located at 8856 Arlington Ave., Riverside, CA (collectively, the “Riverside Clinics”).

BACKGROUND INFORMATION

On September 12, 2022, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

The Debtor is a nonprofit federally qualified health center (“FQHC”) that provides healthcare services to low income and rural patients (collectively, “Patients”) in San Diego and Riverside Counties through a system of twelve clinics, two pharmacies, and six mobile units. In 2021, Debtor provided approximately 386,000 patient care visits to over 94,000 patients. Debtor services include comprehensive primary care, urgent care, behavioral health, dental services, specialty care, transgender health, women’s health, prenatal care, veteran’s health, chiropractic services, tele-health, and pharmacy.

As set forth in the annexed Memorandum of Points and Authorities, the Debtor filed this Case to protect its patient population and explore all available restructuring options, particularly since its patient population faces risks as a result of recent steps taken by the California Department of Health Care Services.

SUMMARY OF REQUESTED RELIEF

By way of background, in the ordinary course of business, the Debtor utilizes an integrated cash management system to collect, concentrate and disburse funds generated by its operations (the “Cash Management System”). The Cash Management System is tailored to meet the Debtor’s operating needs as an operator of a sizeable health system with multiple locations. The Cash Management System enables the Debtor to efficiently collect and disburse cash generated by its business, pay its financial obligations, control and monitor funds and available cash, reduce administrative expenses, and obtain accurate account balances and other financial data. It is critical that the Cash Management System remain intact during this Case to ensure seamless continuation of transactions and uninterrupted collection of revenues and disbursement of internal and third-party obligations, and avoid irreparable harm to the Debtor’s business and its patients.

1 The Cash Management System currently comprises 6 accounts (the
2 “Accounts”), listed on **Exhibit “B”** hereto, with two commercial banks (City
3 National Bank and Community Valley Bank) (collectively the “Banks”) and petty
4 cash at various facilities to pay local expenses that require cash. City National Bank
5 is an authorized depository by the Office of the United States Trustee for Region 16
6 (the “U.S. Trustee”), pursuant to the U.S. Trustee’s Operating Guidelines and
7 Reporting Requirements for Debtors in Possession and Trustees (the “UST
8 Guidelines”). Community Valley Bank (“CVB”) is not currently an authorized
9 depository under the UST Guidelines. Two of the CVB accounts are used to deposit
10 receipts. The Debtor proposes to keep those two CVB accounts open, but to sweep
11 each CVB account to the City National Bank ending in 1993 whenever the balance
12 in a CVB account exceeds \$10,000. The Debtor will promptly close the CVB account
13 ending in 8653.

14 The Debtor requests authority to continue utilizing the Accounts. Requiring
15 the Debtor to close certain of the Accounts and open new ones will disrupt the
16 Debtor’s cash flow – and, ultimately, impact patient care – because (i) the depositors
17 (some of which are governmental agencies) will not respond quickly to the change
18 and will likely continue to send deposits to the original deposit account, and (ii) the
19 Debtor has certain obligations that it pays exclusively by electronic funds transfer
20 and changes to the payment accounts have the potential of slowing down these crucial
21 payments. Closing the Accounts will also increase the work of the Debtor’s
22 accounting personnel, who are already busy addressing the many and varied issues
23 related to this Case. Closing the Accounts and opening new ones under the
24 circumstances described in the attached Memorandum of Points and Authorities
25 would needlessly cost the Debtor time and money at a time when it is trying to
26 conserve both, and would result in no discernible benefit to the Debtor’s bankruptcy
27 estate (the “Estate”), while potentially causing irreparable harm thereto.

28

1 The Debtor also requests authority to continue using its business forms without
2 the designation “Debtor in Possession” on them *for a limited time*. The Debtor’s
3 forms are either electronically printed or can be electronically altered. The Debtor
4 seeks the authority of this Court to utilize its electronically generated forms without
5 the “Debtor in Possession” designation until the adjustments to the software can be
6 initiated and existing stock is exhausted.

7 The Debtor recently sold the assets of the Riverside Clinics to Neighborhood
8 Healthcare, a California nonprofit public benefit corporation (“Neighborhood”) and
9 in connection with that transaction, the Debtor agreed to collect on behalf of
10 Neighborhood and remit to Neighborhood certain capitation payments related to the
11 Riverside Clinics for a transition period anticipated to end on or about October 1,
12 2022. Debtor views those funds as belonging to Neighborhood and not constituting
13 property of the Debtor’s bankruptcy estate and proposes to remit those funds as
14 received to Neighborhood.

15 The Debtor requests that the Court authorize them to continue using its Cash
16 Management System in connection with the continued use of Accounts and continued
17 use of the Debtor’s business forms; in furtherance thereof, the Debtor further requests
18 that the Court authorize and direct the Banks to continue honoring the Debtor’s
19 transactions.

20 In support of the Motion, the Debtor has separately filed the *Declaration of*
21 *Isaac Lee, Chief Restructuring Officer of Borrego Community Health Foundation, in*
22 *Support of Debtor’s Emergency First Day Motions* (the “Lee Declaration”).

23 Based on the foregoing, and for the reasons set forth below, the Debtor
24 respectfully requests that (i) the Motion be heard on an emergency basis³ pursuant to
25 Rule 9013-9 (the “LBR”) of the United States Bankruptcy Court of the Southern
26

27 ³ Pursuant to LBR 9013-9(b), a separate motion for an expedited hearing is not
28 required.

1 District of California (the “Court”) and (ii) the Court grant the relief requested in the
 2 Motion.

3 **ADDITIONAL INFORMATION**

4 The Motion is based on the Notice of Emergency Motions that will be filed
 5 and served after obtaining a hearing date for the Debtor’s “First Day Motions,” the
 6 attached Memorandum of Points and Authorities, the Lee Declaration, and the
 7 arguments of counsel and other admissible evidence properly brought before the
 8 Court at or before the hearing on this Motion. In addition, the Debtor requests that
 9 the Court take judicial notice of all documents filed with the Court in this Case.

10 The Debtor will serve this Motion, the attached Memorandum of Points and
 11 Authorities, the Lee Declaration and the Notice of Emergency Motions in accordance
 12 with LBR 9013-9(d) and Appendix D1 of the LBR on: (i) the Office of the United
 13 States Trustee, (ii) any alleged secured creditors, (iii) the twenty largest general
 14 unsecured creditors appearing on the list filed in accordance with Rule 1007(d) of the
 15 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (iv) the United
 16 States of America and the State of California, (v) parties that file with the Court and
 17 served upon the Debtor requests for notices of all matters in accordance with
 18 Bankruptcy Rule 2002(i), and (vi) the banks providing the bank accounts. To the
 19 extent necessary, the Debtor requests that the Court waive compliance with LBR
 20 Bankruptcy Rules 2002 and 6004(a), and approve service (in addition to the means
 21 of service set forth in such LBR) by overnight delivery and telephonic notice.

22 Pursuant to Appendix D-1(8) of the LBR, any party who opposes this
 23 Emergency First Day Motion must immediately notify the Bankruptcy Judge’s law
 24 clerk of its position by telephone at (619) 557-6750. No opposition may be filed to
 25 an Emergency First Day Motion unless authorized by the Court.

26 In the event that the Court grants the relief requested by the Motion, the Debtor
 27 shall provide notice of the entry of the order granting such relief upon each of the
 28

1 foregoing parties and any other parties in interest as the Court directs. The Debtor
2 submits that such notice is sufficient and that no other or further notice be given.

3 **CONCLUSION**

4 **WHEREFORE**, for all of the foregoing reasons and such additional reasons
5 as may be advanced at or prior to the hearing regarding this Motion, the Debtor
6 respectfully requests that this Court enter an order providing for the following relief:

7 (i) Authorizing the Debtor to continue to use its Cash Management System,
8 including to maintain and continue using its existing Accounts and business forms
9 (until existing stock is exhausted), as described in the attached Memorandum of
10 Points and Authorities;

11 (ii) Authorizing the Debtor to implement changes to its Cash Management
12 System in the ordinary course of business, including closing the Accounts or opening
13 new bank accounts;

14 (iii) Authorizing and directing the Banks to continue to maintain, service and
15 administer the Accounts in the ordinary course of business, including to honor
16 postpetition checks drawn on and transfers made from the Accounts; and requiring
17 that, in the event the Banks refuse to honor a check drawn or a transfer made on an
18 Account maintained by it (provided there are sufficient good funds in the account to
19 complete the transfer), the Banks immediately turn over the deposits held in the
20 applicable Account upon the Debtor's request;

21 (iv) Granting the Banks limited relief from the automatic stay to continue to
22 offset standard monthly bank fees against the Accounts in the same manner as such
23 fees were offset prepetition;

24 (v) Authorizing the Debtor to remit capitation revenue received with respect
25 to the Riverside Clinics to or as directed by Neighborhood; and

26 (vi) Granting such other and further relief as is just and proper under the
27 circumstances.

1 Dated: September 12, 2022
2

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3 By /s/Tania M. Moyron
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5 Proposed Attorneys for the Chapter 11
6 Debtor and Debtor In Possession

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Pursuant to Appendix D1-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of California (the “LB”), Rule 6003 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), and §§ 362, 363 and 105 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Borrego Community Health Foundation (the “Debtor”), the debtor and debtor in possession in the above-captioned Chapter 11 bankruptcy case (the “Case”) has moved, on an emergency basis, in the Motion (the “Motion”) for entry of an order (substantially in the form attached hereto as **Exhibit “A”**, the “Proposed Order”) authorizing the Debtor to: (1) continue to use its cash management system, including the continued maintenance of its existing bank accounts and business forms; (2) implement changes to its cash management system in the ordinary course of business, including opening new or closing existing bank accounts; (3) remit cash received from capitation revenue related to the Riverside Clinics⁴ to or as directed by the acquirer of those clinics; and (4) obtain related relief.

The Debtor further requests that the Court authorize the financial institutions at which the Debtor maintains various bank accounts to (a) continue to maintain, service and administer the Debtor's bank accounts, and (b) debit the bank accounts in the ordinary course of business on account of (i) wire transfers or checks drawn

⁴ The term “Riverside Clinics” references all assets, property and rights of the Debtor related to the operations of the following outpatient clinics located in Riverside County, California: (i) Eastside Health Center Building A, located at 1970 University Ave., Riverside, CA; (ii) Eastside Health Center Building B, located at 1971 University Ave., Riverside CA; and (iii) Arlanza Family Health Center, located at 8856 Arlington Ave., Riverside, CA (collectively, the “Riverside Clinics”).

1 on the bank accounts, or (ii) undisputed service charges owed to the banks for
 2 maintenance of the Debtor's cash management system, if any.

3 **II.**

4 **JURISDICTION**

5 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
 6 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of this
 7 Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8 **III.**

9 **STATEMENT OF FACTS**

10 **A. GENERAL BACKGROUND**

11 1. On September 12, 2022 ("Petition Date"), Borrego Community Health
 12 Foundation ("Debtor") filed a voluntary petition for relief under chapter 11 of title 11
 13 of the United States Code (the "Bankruptcy Code").⁵

14 2. The Debtor is a non-profit 501(c)(3) public charity, a federally qualified
 15 health center ("FQHC"), and a federal tort claims act deemed facility that, as of
 16 September 12, 2022, had twenty-four (24) bricks and mortar sites, including
 17 administrative sites, two (2) pharmacies, and six (6) mobile units. The Debtor's
 18 service area covers a 250-mile corridor on the eastern side of San Diego and
 19 Riverside Counties, California. During 2021, the Debtor provided 235,901 primary
 20 care, 61,532 pediatric care, 16,246 behavioral health, 15,895 dental service and
 21 33,441 women's health patient care visits.

22 3. FQHCs are federally designated entities that receive higher state
 23 payments to provide health care services to low income and rural families. The
 24 Debtor's health services are targeted to families with incomes below 200% of the
 25 poverty level. As a FQHC, the Debtor strives to deliver high quality, comprehensive,

26
 27

 28 ⁵ All references to "§" or "section" herein are to sections of the Bankruptcy Code,
 11 U.S.C. §§ 101, *et seq.*, as amended.

1 compassionate primary health care to people in the surrounding area, regardless of
2 ability to pay.

3 4. The Debtor was organized in the early 1990s to operate a holistic health
4 clinic in Borrego Springs, a small unincorporated community in the northeast corner
5 of San Diego County, California. In 2002, when the Debtor gained recognition as a
6 FQHC, it operated one clinic in Borrego Springs with seventeen (17) employees
7 providing 7,400 patient visits. The Debtor has since grown to approximately 700
8 employees serving over 94,000 patients in eighteen (18) clinics, and six (6) mobile
9 units throughout San Diego and Riverside counties excluding Riverside Community
10 Health Foundation (“RCHF”) affiliated clinics.

11 5. The Debtor to be the community leader in improving the health of the
12 populations in our service area. Its primary focus is the underserved, with an
13 empowering workforce providing measurable quality and compassionate care.

14 6. The Debtor’s services include comprehensive primary care, pediatric
15 care, urgent care, behavioral health, dental services, specialty care, transgender
16 health, women’s health, prenatal care, veteran’s care, chiropractic services, telehealth
17 and pharmacy.

18 7. The Debtor is an active partner in the training of medical residents,
19 medical students, nurse practitioner students, physician assistant students, nursing
20 students, and other healthcare professionals.

21 8. Since the commencement of the Case, the Debtor has been operating as
22 debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

23 9. To date, no official committee or examiner has been appointed by the
24 Office of the United States Trustee in this Case.

25 10. Additional background facts on the Debtor, the Debtor’s business,
26 information on the Debtor’s capital structure and additional events leading up this
27 Case are contained in the Lee Declaration.

B. RELEVANT BACKGROUND TO MOTION

1. As set forth above, as well as in the concurrently filed Lee Declaration, the Debtor maintains 6 Accounts with two Banks and an internal petty cash account, as further detailed herein.⁶ The Debtor's primary disbursement and collection account and payroll account are with City National Bank.

C. BALANCE IN ACCOUNTS

1. As of the Petition Date, the aggregate balance in the Accounts was approximately \$5.2 million. City National Bank is an approved depository for funds of debtor in possession by the U.S. Trustee, so the funds in these Accounts – approximately \$1.7 million in aggregate – are protected as required by § 345 of the Bankruptcy Code. For Community Valley Bank which is not an approved depository institution, the Accounts are generally not very active and the two active accounts are used for smaller deposits which would be difficult to get the payors to redirect. Less than \$3.7 million in the aggregate is currently maintained at Community Valley Bank.

IV.

DISCUSSION

Statutory support for the requested relief exists pursuant to §§ 105(a) and 363(b)(1) and (c)(1) and the “necessity of payment” doctrine. Section 363(c)(1) authorizes a debtor in possession to enter into transactions in the ordinary course of business without notice and a hearing; whereas § 363(b)(1) authorizes a debtor in possession to use property of the estate other than in the ordinary course of business after notice and a hearing. The Debtor requests to continue using its Cash Management System in the ordinary course of business; but even if any of the relief requested herein could be considered outside the ordinary course, the Court may approve it.

⁶ A full list of Accounts is included as **Exhibit “B”** hereto along with a schematic showing the flow of funds into each account attached as part of that exhibit.

1 Pursuant to § 105(a), “the court may issue any order, process, or judgment that
2 is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §
3 105(a). Essentially, § 105(a) provides a statutory counterpart to the bankruptcy
4 court’s otherwise inherent and discretionary equitable powers. *See In re Sasson*, 424
5 F.3d 864, 874 (9th Cir. 2005).

6 The Cash Management System constitutes an ordinary course and essential
7 business practice of the Debtor. The Cash Management System provides significant
8 benefits to the Debtor including, among other things, the ability to (a) control
9 operating funds, (b) ensure the maximum availability of funds when and where
10 necessary, and (c) reduce costs and administrative expenses by facilitating the
11 movement of funds and the development of more timely and accurate account
12 information.

13 The operation of the Debtor requires that the Cash Management System
14 continue during the pendency of this Case. As a practical matter, because of the
15 Debtor’s history and structure, it would be difficult and expensive to establish and
16 maintain a new cash management system; and it would be extraordinarily disruptive
17 and harmful to its operations at this early and critical stage of this Case.
18 Reestablishing and reconnecting deposits and billings to new accounts would be
19 impractical, costly, and an inefficient use of the Debtor’s resources. Any such
20 disruption would have a severe, adverse, and potentially irreparable impact upon the
21 Estate. Consequently, maintaining the Cash Management System is in the best
22 interest of all parties in interest, including patients.

23 The Court may exercise its equitable powers to grant the relief requested
24 herein. Permitting the Debtor to continue using its Cash Management System
25 without interruption is critical to the success of this Case. As currently structured, the
26 Debtor’s Cash Management System enables the Debtor to transfer its revenues,
27 deposits and other receipts toward the payment of its obligations, and recognizes the
28 operation of the Debtor’s various locations and functions as an integrated health

1 system. Without the Cash Management System, the Debtor's efforts to preserve and
2 maximize value would be impaired. It is well within the Court's equitable powers
3 pursuant to §§ 105(a) and 363 to approve the relief requested herein.

4 **A. Maintenance of the Accounts Is in the Best Interests of the Estate**

5 The UST Guidelines require a chapter 11 debtor in possession to open new
6 bank accounts and close all existing accounts upon the commencement of its
7 bankruptcy case. The UST Guidelines also require that new bank accounts be opened
8 at certain financial institutions designated as authorized depositories by the U.S.
9 Trustee. *See Notice Of Requirements For Chapter 11 Debtors In Possession,*
10 available at www.usdoj.gov/ust/r16.

11 However, requiring the Debtor to close the Accounts and to open new ones
12 will disrupt the Debtor's business and cash flow, which could affect patient care.
13 Further, closing the Accounts and opening new ones will also increase the work
14 required of the Debtor's accounting personnel who already are busy addressing the
15 many and varied issues related to the commencement of this Case, and would
16 needlessly cost the Debtor's time and money with no discernible benefit to the Estate
17 at a time when it is trying to conserve both.

18 LBR 2015-1 requires that a debtor comply with the UST Guidelines. The
19 Debtor hereby seeks a waiver of the U.S. Trustee's requirements that it close the
20 existing Accounts and open new postpetition bank accounts at depositories
21 authorized by the U.S. Trustee. The Debtor requests instead that it be allowed to
22 convert the Accounts, which are already primarily at depositories authorized by the
23 U.S. Trustee, to "debtor in possession" accounts and continue to utilize them as
24 necessary to best serve its business needs.

25 Even though the Debtor has multiple accounts, the Debtor only utilizes one
26 account at City National Bank for its daily disbursements to trade vendors and one
27 account at Community Valley Bank for certain periodic disbursements (the Debtor
28 plans to consolidate those disbursements into the City National Bank disbursement

1 account post-petition). As such, there will be no confusion of postpetition
 2 transactions with prepetition ones. Requiring the Debtor to close the Accounts would
 3 serve no purpose but would, as stated, delay the Debtor's ability to utilize its funds,
 4 put further burdens on accounting personnel dealing with the Debtor's many financial
 5 issues and cost the Debtor's time and money better used in its efforts to maximize
 6 value of the Estate for its creditors.

7 Bankruptcy courts across the country routinely grant relief similar to that
 8 requested in this Motion; because such considerations are so obvious, however, few
 9 decisions related to such requests are published or reported. *But see In re Gen.*
 10 *Growth Props., Inc.*, 412 B.R. 609 (Bankr. S.D.N.Y. 2009); *In re UAL Corp.*, No.
 11 02-B-48191, 2002 WL 34344255 (Bankr. N.D. Ill. Dec. 9, 2002). Local bankruptcy
 12 courts have routinely (a) waived the strict enforcement of the U.S. Trustee Guidelines
 13 requiring closing prepetition bank accounts and (b) approved the continued use of
 14 existing cash management systems, including a hospital system's authority to
 15 continue using prepetition bank accounts. *See, e.g., In re Victor Valley Cnty. Hosp.*,
 16 Case No. 10-39537-CB, Docket No. 32 (Bankr. C.D. Cal. Sep. 17, 2010); *In re*
 17 *Downey Reg'l Med. Ctr.-Hosp., Inc.*, Case No. 09-34714-BB, Docket No. 38 (Bankr.
 18 C.D. Cal. Sep. 17, 2009); *In re Z Gallerie*, Case No. 09-18400-VZ, Docket No. 46
 19 (Bankr. C.D. Cal. Apr. 16, 2009). The Debtor respectfully submits that continued
 20 use of the Accounts should be approved in this Case as well.

21 **B. Honoring Certain Prepetition Obligations Related to the Cash**
 22 **Management System Should Be Approved**

23 The Debtor incurs periodic service charges and other fees from the Banks in
 24 connection with the maintenance of the Cash Management System (collectively, the
 25 "Bank Fees"), which average approximately \$1,600 per month, which the Debtor's
 26 estimate that it owes as of the Petition Date and is payable on or about September 19,
 27 2022. Payment of any prepetition Bank Fees is in the best interests of the Debtor and
 28 all parties in interest in this Case, as it will prevent unnecessary disruptions to the

1 Cash Management System and ensure that the Debtor's receipt of funds are not
2 delayed. Further, because the Banks likely have setoff rights for the Bank Fees,
3 payment of prepetition Bank Fees should not alter the rights of unsecured creditors
4 in this Case.

5 **C. Authorizing and Directing the Banks to Honor Postpetition Checks and**
6 **Granting Banks Limited Relief from the Automatic Stay**

7 In relation to the above requested relief, the Debtor also requests that the Court:
8 (i) authorize and direct the Banks to honor postpetition checks drawn on and transfers
9 made from the Accounts; (ii) require that in the event the Banks refuse to honor
10 checks drawn on the Debtor's Accounts or transfer instructions made on its Accounts
11 (provided there are sufficient good funds in the account to honor the checks or
12 transfer instructions and the checks are otherwise properly payable), the Banks
13 immediately turn over the deposits held in the applicable Accounts upon the Debtor's
14 request, and (iii) grant the Banks limited relief from the automatic stay to continue to
15 offset standard monthly or periodic bank fees against the Accounts in the same
16 manner as such fees were offset prepetition. Courts in this district have routinely
17 granted this relief, and the Debtor respectfully submits that the same relief should be
18 approved in this Case as well. *See* citations, at 24, ll. 4-7, *supra*.

19 **D. Maintenance of the Debtor's Existing Business Forms Is in the Best**
20 **Interests of the Estate**

21 The Debtor is also requesting authority to continue using its business forms
22 without the designation "Debtor in Possession" on them for a limited time. Many of
23 the Debtor's business forms are electronically generated or, if printed, can be
24 electronically altered. The Debtor seeks the authority of this Court to utilize its forms
25 without the "Debtor in Possession" designation until existing stock is exhausted, and
26 until the Debtor can make the necessary adjustments to its software so that these
27 forms will contain the phrase "Debtor in Possession."

28

1 Courts in this district routinely grant authority to continue using existing
2 business forms in chapter 11 cases until new forms can be printed and its current
3 stock is depleted. *See* citations, at 24, ll. 4-7, *supra*. Such authority is routinely
4 granted excusing a business enterprise from suffering the disruption and expense of
5 immediately replacing or otherwise placing the “Debtor in Possession” designation
6 on all of its pre-existing business forms, hampering the administration of a chapter
7 11 case to the further economic detriment of creditors while the new forms are being
8 generated, all because it is counter-productive to the purpose of the bankruptcy filing.

9 Accordingly, the Debtor respectfully requests continued use of its existing
10 business forms as set forth above, until existing stock is exhausted.

11 **E. The Court Should Authorize the Banks to Immediately Release Any and**
12 **All Administrative Holds and/or Freezes That They May Have on the**
13 **Accounts**

14 The United States Supreme Court as well as courts within the Ninth Circuit
15 have discussed whether the placement of an administrative “freeze” or hold on a
16 debtor’s bank account violates the automatic stay; and their holdings depend on
17 several factors including under which chapter of the Bankruptcy Code the case is
18 proceeding and what, if any, setoff rights the bank holds. *See, e.g., Citizens Bank of*
19 *Md. v. Strumpf*, 516 U.S. 16 (1995); *In re Mwangi*, 764 F.3d 1168 (9th Cir. 2014); *In*
20 *re Tuscan Ranch, Inc.*, No. BAP AZ-11-1045, 2012 WL 603639, at *6 (B.A.P. 9th
21 Cir. Feb. 2, 2012).

22 The Debtor is not seeking any determination from the Court at this time with
23 respect to the validity or the permissibility of the policy described above.
24 Nonetheless, as the Debtor is seeking to keep the Cash Management System in place,
25 and concurrently requesting authority to immediately pay prepetition payroll, in an
26 abundance of caution, the Debtor respectfully requests that the Court exercise its
27 authority pursuant to § 105 and authorize the immediate release on all holds or freezes
28 on the Accounts.

F. The Court Should Authorize the Debtor to Remit Capitation Payments Received by the Debtor Related to the Riverside Clinics to or as Directed by the Purchaser of the Riverside Clinics

The Debtor recently sold the assets of the Riverside Clinics to Neighborhood Healthcare, a California nonprofit public benefit corporation (“Neighborhood”) and in connection with that transaction, the Debtor agreed to collect on behalf of Neighborhood and remit to Neighborhood certain capitation payments related to the Riverside Clinics for a transition period anticipated to end on or about October 1, 2022. Debtor views those funds as belonging to Neighborhood and not constituting property of the Debtor’s bankruptcy estate and proposed to remit those funds as received to or as directed by Neighborhood.

V.

CONCLUSION

WHEREFORE, for all the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing on the Motion, the Debtor respectfully requests that this Court enter an Order:

(a) Authorizing the Debtor to continue to use its Cash Management System, including to maintain and continue using its existing Accounts and business forms (until existing stock is exhausted);

(b) Authorizing the Debtor to implement changes to its Cash Management System in the ordinary course of business, including closing the Accounts or opening new bank accounts;

(c) Authorizing and directing the Banks to continue to maintain, service and administer the Accounts in the ordinary course of business, including to honor postpetition checks drawn on and transfers made from the Accounts; and requiring that, in the event the Banks refuse to honor a check drawn or a transfer made on an Account maintained by it (provided there are sufficient good funds in the account to

1 complete the transfer), the Banks immediately turn over the deposits held in the
2 applicable Account upon the Debtor's request;

3 (e) Granting the Banks limited relief from the automatic stay to continue to
4 offset standard monthly bank fees against the Accounts in the same manner as such
5 fees were offset prepetition, including those fees accrued prepetition in the amount
6 of approximately \$1,500.00;

7 (f) Authorizing the Debtor to remit capitation revenue received with respect
8 to the Riverside Clinics to or as directed by Neighborhood; and

9 (g) Granting such other and further relief as is just and proper under the
10 circumstances.

11 Dated: September 12, 2022

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

13 By /s/Tania M. Moyron
14 Tania M. Moyron

15 Proposed Attorneys for the Chapter 11
16 Debtor and Debtor In Possession

Exhibit “A”
(Proposed Order)

Exhibit A

CSD 1008 [08/21/00]

Name, Address, Telephone No. & I.D. No.

DENTONS US LLP

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Proposed Attorneys for the Chapter 11 Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West F Street, San Diego, California 92101-6991

In Re

BORREGO COMMUNITY HEALTH FOUNDATION

Debtor.

BANKRUPTCY NO. 22-02384

Date of Hearing:

Time of Hearing:

Name of Judge: Honorable Laura S. Taylor

ORDER ON

**EMERGENCY FIRST DAY MOTION OF DEBTOR FOR AUTHORITY TO:
(I) CONTINUE USING EXISTING CASH MANAGEMENT SYSTEM, BANK ACCOUNTS AND
BUSINESS FORMS; (II) IMPLEMENT CHANGES TO THE CASH MANAGEMENT SYSTEM IN
THE ORDINARY COURSE OF BUSINESS; (III) REMIT CAPITATION PAYMENTS TO OR AS
DIRECTED BY THE PURCHASER OF THE RIVERSIDE CLINICS; AND (IV) OBTAIN RELATED
RELIEF**

The court orders as set forth on the continuation pages attached and numbered 2 through 4 with exhibits, if any, for a total of pages 6. Motion/Application Docket Entry No. _____.

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DATED:

Judge, United States Bankruptcy Court

CSD 1001A

CSD 1001A [07/01/18] (Page 2)

ORDER ON EMERGENCY FIRST DAY MOTION OF DEBTOR FOR AUTHORITY TO: (I) CONTINUE USING EXISTING CASH MANAGEMENT SYSTEM, BANK ACCOUNTS AND BUSINESS FORMS; (II) IMPLEMENT CHANGES TO THE CASH MANAGEMENT SYSTEM IN THE ORDINARY COURSE OF BUSINESS; (III) REMIT CAPITATION PAYMENTS TO OR AS DIRECTED BY THE PURCHASER OF THE RIVERSIDE CLINICS; AND (IV) OBTAIN RELATED RELIEF

DEBTOR: BORREGO COMMUNITY HEALTH FOUNDATION CASE NO: 22-02384

Having considered the Emergency Motion,¹ the accompanying Memorandum of Points and Authorities in support of the Emergency Motion, and the Declaration of Isaac Lee in support of the Emergency Motion, the arguments of counsel at the hearing, and good cause appearing therefore,

IT IS FURTHER ORDERED that:

1. The Emergency Motion is granted in its entirety.
2. The Debtor is authorized and empowered pursuant to sections 105(a), 363, 364, 503 and 507 of the Bankruptcy Code to continue using its Cash Management System and to collect, concentrate, and disburse cash in accordance with the Cash Management System;
3. The Debtor is authorized to implement changes to its Cash Management System in the ordinary course of business, including closing any existing bank accounts or opening any new bank accounts (collectively, the “Accounts”) as the Debtor may deem necessary and appropriate in its sole discretion; provided that any such new account is (i) with a bank that is (A) insured with the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and (B) designated as an authorized depository pursuant to the UST Guidelines, and (ii) the Debtor provides notice to the U.S. Trustee of the opening of such account. The Debtor may keep the two accounts at Community Valley Bank where deposits are received open for purposes of continuing to collect those receipts from payors provided it shall forward excess funds to the City National Bank disbursement account to the extent any funds on deposit at an account at Community Valley Bank exceeds \$10,000 at any time;
4. The Debtor is authorized to (i) continue to use, with the same account numbers, all of the Accounts in existence as of the Petition Date, including those Accounts identified on **Exhibit “B”** to the Emergency Motion; and (ii) treat the Accounts for all purposes as accounts of the Debtor as debtor in possession;

¹ Defined terms in this Order shall have the same meaning as in the Emergency Motion unless otherwise defined herein.

Exhibit A

CSD 1001A [07/01/18] (Page 3)

5. The Debtor is authorized to continue to use, in their present form, all correspondence and business forms, as well as checks and all other documents related to the Accounts (collectively, the "Business Forms") existing immediately before the Petition Date, without reference to the Debtor's status as debtor in possession, until existing stock is exhausted; provided that in the event the Debtor generate new Business Forms during the pendency of this chapter 11 Case, such Business Forms shall include a legend referring to the Debtor as "Debtor in Possession," and, to the extent practicable, the Debtor shall print such legend on any Business Forms electronically generated during this case;

6. Except as otherwise provided in this Order, all banks at which the Accounts are maintained (collectively, the "Banks") are authorized and directed to continue to maintain, service and administer the Accounts as accounts of the Debtor as debtor in possession, without interruption and in the ordinary course of business, and to receive, process, honor and pay any and all checks, drafts, wires, and ACH payments issued by the Debtor and drawn on the Accounts after the Petition Date to the extent the Debtor has sufficient funds standing to its credit with such Bank; provided that any payments drawn, issued or made prior to the Petition Date shall not be honored absent direction of the Debtor and a separate order of the Court authorizing such prepetition payment;

7. In the event the Banks refuse to honor a check drawn or a transfer made on an Account maintained by it (provided there are sufficient good funds in the account to complete the transfer), the Banks are authorized and directed to immediately turn over the deposits held in the applicable Account upon the Debtor's request;

8. The Banks are authorized to charge and the Debtor is authorized to pay and honor, both prepetition and postpetition service and other fees, costs, charges, and expenses to which the Banks may be entitled under the terms of and in accordance with the Banks' contractual arrangements with Debtor (collectively, the "Service Charges");

9. The Banks are authorized to debit the Debtor's accounts in the ordinary course of business without need for further order of this Court for: (i) all checks, items, and other payment orders drawn on the Debtor's accounts that are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Bank's receipt of notice of filing of the Petition; (ii) all checks, automated clearing house entries, and other items deposited or credited to one of the Debtor's accounts with such Bank prior to the Petition Date that have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such costs and fees prior to the Petition Date; and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as Service Charges for the maintenance of the Cash Management System;

Exhibit A

CSD 1001A [07/01/18] (Page 4)

10. As of the Petition Date, the Banks may rely on the representations of the Debtor with respect to whether any check, item, or other payment order drawn or issued by the Debtor prior to filing of the Petition should be honored pursuant to this or any other order of this Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein, and shall not be liable to any party on account of (i) following the Debtor's representations, instructions, directions, or presentations as to any order of the Court (without any duty of further inquiry), (ii) honoring of any prepetition checks, drafts, wires or ACH payments in a good faith belief or upon a representation by the Debtor that the Court has authorized such prepetition check, draft, wire or ACH payments or (iii) an innocent mistake made despite implementation of reasonable handling procedures;

11. Those certain existing deposit agreements between the Debtor and the Banks shall continue to govern the postpetition cash management relationship between the Debtor and the Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect; either the Debtor or the Banks may, without further order of this Court, implement changes to the Debtor's Cash Management System in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including the opening and closing of bank accounts;

12. The relief, rights, and responsibilities provided for in this Order shall be deemed to apply to any and all Accounts maintained in the Debtor's name, including any new bank accounts, whether or not such Accounts are identified on **Exhibit "B"** to the Motion, and any Banks at which new accounts are opened shall be subject to the rights and obligations of this Order;

13. The Debtor is authorized to remit capitation revenue received with respect to the Riverside Clinics to or as directed by Neighborhood Healthcare;

14. Nothing contained in this Order, nor any payment made pursuant to the authority granted by this Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Debtor's or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtor, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtor and any third party under section 365 of the Bankruptcy Code;

15. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party;

16. Notice of the Emergency Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rules 2002 and 6004(a) and LBR 9013(9)(d) and Appendix D-1(2) the Local Bankruptcy Rules are waived and/or satisfied by such notice.

17. The Debtor is authorized to take all action necessary to effectuate the relief granted in this Order; and

18. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

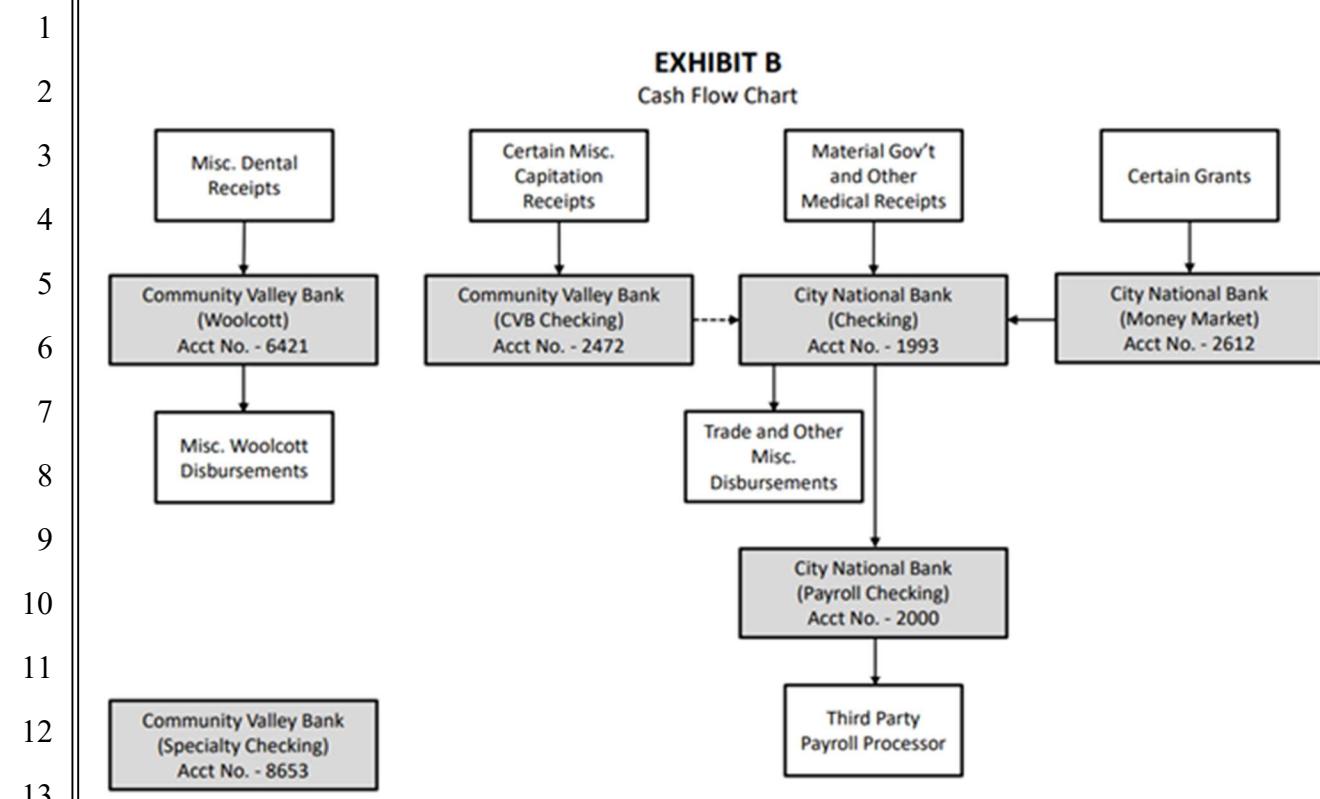
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EXHIBIT “B”
(Description of Bank Accounts and Flow
of Funds Schematic Chart)

EXHIBIT B

Description of Bank Accounts and Flow of Funds Schematic Chart

	Bank	Type	Description	Account No.
1	City National Bank	Checking	Account Payable and Depository from Larger Payors	xxxx1993
2	City National Bank	Payroll Checking	Payroll	xxxx2000
3	City National Bank	Money Market	Deposits from Grants	xxxx2612
4	Community Valley Bank	Checking	Smaller Deposits	xxx2472
5	Community Valley Bank	Specialty Checking	Not Active in CY 2022 – balance around \$3,000	xxxxxx8653
6	Community Valley Bank	Woolcott Dental Clinic	No material activity in CY 2022 (approximately \$70/Month of debits)	xxx6421
7	Internal Petty Cash	Petty Cash	No material activity in CY 2022 (around \$300 of deposits and around \$1,800 of withdrawal). The total amount of all petty cash at all facilities is under \$15,000.	N/A



Note: Account 2472 at Community Valley Bank rarely makes disbursements. In the event cash is required from this account, it could be transferred to City National Bank, account 1993.

Bank, account 1993.